

**SUMMONS  
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

N R A CONSTRUCTION COMPANY, INC.; MANCEBO CORPORATION; DOUG ROSS ENGINEERING CONCEPTS, INC.;  
(Additional Parties Attachment form is attached)

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

CONSUMER ADVOCACY GROUP, INC., in the interest of the Public

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**FILED  
ALAMEDA COUNTY**

MAR 24 2008

**CLERK OF THE SUPERIOR COURT**

By M. Kautz Deputy

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

*Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.*

*Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.*

ORIGINAL

The name and address of the court is:  
(El nombre y dirección de la corte es):

Superior Court of the State of California for the County of Alameda  
Rene C. Davidson Alameda County Courthouse  
1225 Fallon St, Oakland, CA 94612

CASE NUMBER: **RG 08378175**  
(Número del caso)

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Reuben Yeroushalmi, Yeroushalmi & Associates, 3700 Wilshire Blvd., Suite 480,  
Los Angeles, CA 90010, 213-382-3183

DATE: **MAR 24 2008**  
(Fecha)

**Pat S. Sweeten**

Clerk, by Molly Kautz, Deputy  
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

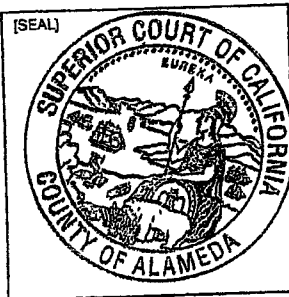
**NOTICE TO THE PERSON SERVED: You are served**

1.  as an individual defendant  
2.  as the person sued under the fictitious name of (specify):

3.  on behalf of (specify):

- |  |   |
|--|---|
| under: <input type="checkbox"/> CCP 416.10 (corporation)         | <input type="checkbox"/> CCP 416.60 (minor)             |
| <input type="checkbox"/> CCP 416.20 (defunct corporation)        | <input type="checkbox"/> CCP 416.70 (conservatee)       |
| <input type="checkbox"/> CCP 416.40 (association or partnership) | <input type="checkbox"/> CCP 416.90 (authorized person) |

4.  other (specify):  
4.  by personal delivery on (date):



SHORT TITLE: Consumer Advocacy Group Inc. v. N R A Construction Company, et al	CASE NUMBER:
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**INSTRUCTIONS FOR USE**

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff   
  Defendant   
  Cross-Complainant   
  Cross-Defendant

PAUL T. BECK CONTRACTORS, INC.; MONTEREY PENINSULA ENGINEERING; K & M ASPHALT MAINTENANCE SPECIALISTS INC.; ASPHALT MAINTENANCE SYSTEMS INC.; AMTEK CONSTRUCTION; AMERICAN ASPHALT & CONCRETE, INC.; FRANK AND SON PAVING, INC.; MILLER PAVING CORPORATION; APEX DEVELOPMENT INC.; INTERSTATE GRADING AND PAVING, INC.; RELIABLE PAVING COMPANY; and DOES 1-1000



\*6488161\*

1 REUBEN YEROUSHALMI (SBN 193981)  
 2 DANIEL D. CHO (SBN 105409)  
 3 YEROUSHALMI & ASSOCIATES  
 3700 WILSHIRE BLVD., SUITE 480  
 4 LOS ANGELES, CA 90010  
 Telephone: 213-382-3183  
 5 Facsimile: 213-382-3430  
 Email: lawfirm@yeroushalmi.com

**FILED**  
**ALAMEDA COUNTY**

MAR 24 2008

CLERK OF THE SUPERIOR COURT  
 By M. K. [Signature] Deputy

6 Attorneys for Plaintiff,  
 7 Consumer Advocacy Group, Inc.

**SUMMONS ISSUED**

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA--UNLIMITED

11 CONSUMER ADVOCACY GROUP, INC., )  
 12 in the interest of the Public, )  
 13 )  
 14 Plaintiff, )

Case No. **RG 08378175**

COMPLAINT FOR PENALTY,  
INJUNCTION, AND RESTITUTION

v. )

Violation of Proposition 65, the Safe  
 Drinking Water and Toxic Enforcement  
 Act, 1986 (Health & Saf. Code., §§  
 25249.5, et seq.)

16 N R A CONSTRUCTION COMPANY, INC.; )  
 17 MANCEBO CORPORATION; )  
 18 DOUG ROSS ENGINEERING CONCEPTS, )  
 19 INC.; PAUL T. BECK CONTRACTORS, )  
 20 INC.; MONTEREY PENINSULA )  
 ENGINEERING; K & M ASPHALT )  
 21 MAINTENANCE SPECIALISTS INC.; )  
 ASPHALT MAINTENANCE SYSTEMS INC.; )  
 22 AMTEK CONSTRUCTION; AMERICAN )  
 ASPHALT & CONCRETE, INC.; FRANK )  
 23 AND SON PAVING, INC.; MILLER )  
 PAVING CORPORATION; APEX )  
 24 DEVELOPMENT INC.; INTERSTATE )  
 GRADING AND PAVING, INC.; RELIABLE )  
 25 PAVING COMPANY; and DOES 1-1000; )  
 Defendants. )

ORIGINAL

1 **BACKGROUND AND PRELIMINARY FACTS**

- 2 1. In 1986, California voters approved an initiative to address growing concerns about  
3 exposure to toxic chemicals. The initiative, The Safe Drinking Water and Toxic  
4 Enforcement Act of 1986, codified at Health and Safety Code sections 25249.5 et seq.  
5 (“Proposition 65”), helps to protect California’s drinking water sources from  
6 contamination, to allow consumers to make informed choices about the products they  
7 buy, and to enable persons to protect themselves from toxic chemicals as they see fit.
- 8  
9 2. Proposition 65 requires the Governor of California to publish a list of chemicals known to  
10 the state to cause cancer, birth defects, or other reproductive harm (“Proposition 65-  
11 Listed Chemicals”). (Health & Saf. Code, § 25249.8.) The list, which the Governor  
12 updates at least once a year, contains over 550 chemicals. Proposition 65 imposes  
13 warning requirements and other controls that apply to Proposition 65-Listed Chemicals.
- 14  
15 3. All businesses with ten or more employees that operate or sell products in California  
16 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited  
17 from knowingly discharging Proposition 65-Listed Chemicals into sources of drinking  
18 water (Health & Saf. Code, § 25249.5), and (2) required to provide “clear and  
19 reasonable” warnings before exposing a person, knowingly and intentionally, to a  
20 Proposition 65-Listed Chemical (Health & Saf. Code, § 25249.6)
- 21  
22 4. Plaintiff, Consumer Advocacy Group, Inc. (“Plaintiff”) is a non-profit corporation  
23 qualified to do business in the State of California. It brings this action in the public  
24 interest as defined under Health and Safety Code section 25249.7, subdivision (d).
- 25  
26 5. Defendants N R A Construction Company, Inc.; Mancebo Corporation; Doug Ross  
27 Engineering Concepts, Inc.; Paul T. Beck Contractors, Inc.; Monterey Peninsula  
28 Engineering; K & M Asphalt Maintenance Specialists Inc.; Asphalt Maintenance

1 Systems Inc.; Amtek Construction; American Asphalt & Concrete, Inc.; Frank and Son  
2 Paving, Inc.; Miller Paving Corporation; Apex Development Inc.; Interstate Grading and  
3 Paving, Inc.; Reliable Paving Company; and Does 1-1000 (collectively, "Defendants"),  
4 are and at all times mentioned herein have been qualified to do business in the State of  
5 California, and at all times mentioned herein have conducted business within the State of  
6 California.  
7

8 6. Plaintiff is ignorant of the true names and capacities of defendants sued as Does 1-1000,  
9 and therefore sue these defendants by such fictitious names. Plaintiff will amend this  
10 complaint to allege their true names and capacities when ascertained. Plaintiff is  
11 informed, believes, and thereon alleges that each of the fictitiously named defendants is  
12 responsible in some manner for the occurrences herein alleged and the damages caused  
13 thereby.  
14

15 7. At all times mentioned herein, "Defendants" include N R A Construction Company, Inc.;  
16 Mancebo Corporation; Doug Ross Engineering Concepts, Inc.; Paul T. Beck Contractors,  
17 Inc.; Monterey Peninsula Engineering; K & M Asphalt Maintenance Specialists Inc.;  
18 Asphalt Maintenance Systems Inc.; Amtek Construction; American Asphalt & Concrete,  
19 Inc.; Frank and Son Paving, Inc.; Miller Paving Corporation; Apex Development Inc.;  
20 Interstate Grading and Paving, Inc.; Reliable Paving Company; and Does 1-1000.  
21

22 8. At all relevant times, each Defendant was a person doing business within the meaning of  
23 Health and Safety Code section 25249.11, subdivision (a). Plaintiff is informed, believes,  
24 and thereon alleges that at all times mentioned herein each Defendant has had 10 or more  
25 employees.  
26  
27  
28

1 9. In 2000 and 2001, Plaintiff conducted research, from which it identified an industry-wide  
2 practice among California companies involved in paving operations, of exposing,  
3 knowingly and intentionally, persons to asphalt paving products without first providing  
4 clear and reasonable warnings of such to the exposed persons prior to exposure. Asphalt  
5 is extremely toxic material, containing numerous Proposition 65-Listed Chemicals.  
6

7 10. Each respective defendant has been intentionally exposing persons, by deliberately using  
8 Asphalt, to the constituent chemicals of Asphalt and related products and materials,  
9 including Hot Mix Asphalt, as listed in herein and designated by the State of California to  
10 cause cancer, birth defects, and reproductive toxicity, pursuant to the Code of Civil  
11 Regulations (hereinafter "CCR"), title 22, section 12000, without first giving a clear and  
12 reasonable warning of such to the exposed persons, in violation of Proposition 65.  
13

14 11. Plaintiff mailed a separate Proposition 65 60-day Notice of intent to sue to Defendants N  
15 R A Construction Company, Inc.; Mancebo Corporation; Doug Ross Engineering  
16 Concepts, Inc.; Paul T. Beck Contractors, Inc.; Monterey Peninsula Engineering; K & M  
17 Asphalt Maintenance Specialists Inc.; Asphalt Maintenance Systems Inc.; Amtek  
18 Construction; American Asphalt & Concrete, Inc.; Frank and Son Paving, Inc.; Miller  
19 Paving Corporation; Apex Development Inc.; Interstate Grading and Paving, Inc.; and  
20 Reliable Paving Company; respectively. Such Notices stated that each respective  
21 defendant, by failing to warn persons of exposures to Proposition 65-Listed Chemicals  
22 before exposing them to such chemicals, had violated Proposition 65. Copies of the  
23 notices were mailed to the California Attorney General ("Attorney General") and the  
24 County District Attorneys and City Attorneys for each city containing a population of at  
25  
26  
27  
28

1 least 750,000 people, for the locations within which Defendants have allegedly violated  
2 Proposition 65.

3 12. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article  
4 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except  
5 those given by statute to other trial courts. Plaintiff brings this lawsuit under statutes that  
6 do not specify any other basis of jurisdiction.  
7

8 **FIRST CAUSE OF ACTION BY CONSUMER ADVOCACY GROUP, INC AND**  
9 **AGAINST DEFENDANTS N R A CONSTRUCTION COMPANY, INC.; MANCEBO**  
10 **CORPORATION; DOUG ROSS ENGINEERING CONCEPTS, INC.; PAUL T. BECK**  
11 **CONTRACTORS, INC.; MONTEREY PENINSULA ENGINEERING; K & M ASPHALT**  
12 **MAINTENANCE SPECIALISTS INC.; ASPHALT MAINTENANCE SYSTEMS INC.;**  
13 **AMTEK CONSTRUCTION; AMERICAN ASPHALT & CONCRETE, INC.; FRANK**  
14 **AND SON PAVING, INC.; MILLER PAVING CORPORATION; APEX**  
15 **DEVELOPMENT INC.; INTERSTATE GRADING AND PAVING, INC.; RELIABLE**  
16 **PAVING COMPANY; AND DOES 1-1000 FOR VIOLATIONS OF PROPOSITION 65,**  
17 **THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT, 1986 (HEALTH**  
18 **& SAF. CODE, §§ 25249.5, ET SEQ.**

19 13. Plaintiff CAG repeats and incorporates by reference paragraphs 1 through 12 of this  
20 complaint as though fully set forth herein.

21 14. Defendants are and at all times mentioned herein have been engaged in the business of  
22 the paving of roads, berms, pathways, parking lots, and other surfaces, or the  
23 manufacturing, selling, storing, distributing, installing, and laying of Asphalt products.

24 15. Defendants have been exposing persons, knowingly and intentionally, by deliberately  
25 using asphalt, to the constituent Proposition 65-Listed Chemicals of asphalt, without first  
26 giving clear and reasonable warning of such to the exposed persons before the time of  
27 exposure. (Health & Saf. Code, § 25249.6.)  
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16. On or about August 29, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to sue to N R A Construction Company, Inc. alleging the facts found in Paragraph 10 of this pleading.

17. On or about August 29, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to sue to Mancebo Corporation, alleging the facts found in Paragraph 10 of this pleading.

18. On or about August 29, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to sue to Doug Ross Engineering Concepts, Inc. alleging the facts found in Paragraph 10 of this pleading.

19. On or about August 29, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to sue to Paul T. Beck Contractors, Inc. alleging the facts found in Paragraph 10 of this pleading.

20. On or about August 29, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to sue to Monterey Peninsula Engineering alleging the facts found in Paragraph 10 of this pleading.

21. On or about August 29, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to sue to K & M Asphalt Maintenance Specialists Inc. alleging the facts found in Paragraph 10 of this pleading.

22. On or about August 29, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to sue to Asphalt Maintenance Systems Inc. alleging the facts found in Paragraph 10 of this pleading.

23. On or about August 23, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to sue to Amtek Construction alleging the facts found in Paragraph 10 of this pleading.



1 24. On or about June 1, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to sue to  
2 American Asphalt & Concrete, Inc. alleging the facts found in Paragraph 10 of this  
3 pleading.

4  
5 25. On or about June 1, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to sue to  
6 Frank and Son Paving, Inc. alleging the facts found in Paragraph 10 of this pleading.

7 26. On or about June 1, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to sue to  
8 Miller Paving Corporation alleging the facts found in Paragraph 10 of this pleading.

9  
10 27. On or about March 9, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to sue  
11 to Apex Development Inc. alleging the facts found in Paragraph 10 of this pleading.

12 28. On or about August 29, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to  
13 sue to Interstate Grading and Paving, Inc. alleging the facts found in Paragraph 10 of this  
14 pleading.

15  
16 29. On or about March 9, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to sue  
17 to Reliable Paving Company alleging the facts found in Paragraph 10 of this pleading.

18 30. Each Proposition 65 60-Day Notice of intent to sue listed above included a certificate of  
19 merit executed by the attorney for the noticing party, Plaintiff. The certificate of merit  
20 stated that the attorney for Plaintiff who executed the certificate had consulted with at  
21 least one person with relevant and appropriate expertise who had reviewed data regarding  
22 the exposure to Proposition 65-Listed Chemicals that are the subjects of the action.

23  
24 Based on that information, the attorney for Plaintiff who executed the certificate believed  
25 there was a reasonable and meritorious case for this private action. The attorney for  
26 Plaintiff attached to the certificate of merit served on the Attorney General information  
27 sufficient to establish the basis of the certificate of merit.  
28

1 31. Plaintiff is commencing this action more than sixty days (plus five calendar days because  
2 the place of mailing and the place of address as to those notices were within California)  
3 from the date that Plaintiff gave notice of the alleged violations of Proposition 65 to each  
4 respective named defendant, the Attorney General, and applicable district attorneys and  
5 city attorneys in whose jurisdictions the violations allegedly occurred.  
6

7 32. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor  
8 any applicable district attorney or city attorney has commenced and is diligently  
9 prosecuting an action against the violation.  
10

11 **ENVIRONMENTAL EXPOSURE**

12 33. Between three years before the sending of each respective Proposition 65 60-Day Notice  
13 of intent to sue and the present, in the normal course of business, Defendants conducted  
14 operations involving, relating to, or leading to, the paving and striping of roads,  
15 pathways, berms, parking lots, and other surfaces. Defendants have been knowingly and  
16 intentionally exposing reasonably foreseeable members of the public, including neighbors  
17 and residents, passersby, motorists, engineers, and inspectors not in the direct employ of  
18 violators and found within a 100 foot radius of where paving work has been performed,  
19 using products containing the constituent chemicals of Asphalt and related products and  
20 materials, including Hot Mix Asphalt, as listed in herein and designated by the State of  
21 California to cause cancer, birth defects, or reproductive toxicity without first giving clear  
22 and reasonable warning of such to the exposed persons.  
23  
24

25 34. The sources of exposures are the constituent chemicals of Asphalt and related products  
26 and materials, and the use of such. The locations of the exposures include areas within a  
27 100 foot radius of the Defendants' places of business, involving activities including  
28

1 whereby asphalt cement, a crude oil product that has been refined, and aggregate have  
2 been heated and mixed to create Asphalt or Hot Mix Asphalt, to the area along and within  
3 100 feet of the route traveled between said places of business and where paving materials  
4 have been stored and paving work has been performed, including the street, sidewalks,  
5 and pathways within 100 feet of such locations, the vicinity of work vehicles and the  
6 immediately neighboring areas affected by the constituent chemicals of Asphalt and  
7 related products and materials Hot Mix Asphalt, Asphalt smoke, and associated fumes  
8 that have been breathed in via the ambient air by the exposed persons causing contact  
9 with their mouths, throats, esophagi, and lungs.  
10  
11

12 35. The route of exposure for environmental exposures has been the inhalation contact  
13 described above. Exposures took place in the California counties whose District  
14 Attorneys received copies of the operative 60-Day Notices. The exposures took place  
15 both on and beyond property owned or controlled by Defendants  
16

17 **OCCUPATIONAL EXPOSURE**

18 36. Between three years before the sending of each respective Proposition 65 60-Day Notice  
19 of intent to sue and the present, in the normal course of business, Defendants by storing,  
20 heating, installing, and laying Asphalt products, have been knowingly and intentionally  
21 exposing their employees to the constituent chemicals of Asphalt and related products  
22 and materials, including Hot Mix Asphalt, as listed herein and designated by the State of  
23 California to cause cancer, birth defects, or reproductive toxicity without first giving clear  
24 and reasonable warning of such to their employees.  
25

26 37. The sources of exposures include the constituent chemicals of Asphalt and related  
27 products and materials, and the use of Asphalt, including Hot Mix Asphalt, as listed  
28

1 herein. The employees of the Defendants include, but are not limited to, paving  
2 contractors, flag persons, drivers, truck drivers, paving machine operators and workers  
3 involved in grading and raking Asphalt at locations where Asphalt is applied. Exposures  
4 occurred in locations including the storage facilities/garage areas where the Asphalt,  
5 including Asphalt cement, were stored or made at Defendants' places of business, as  
6 referenced above, on and in the vicinity of work vehicles transporting Asphalt, including  
7 Hot Mix Asphalt, the addresses where paving installations were performed, and the areas  
8 along the routes traveled between said places of business and the addresses where paving  
9 work was performed, by which the Asphalt, including Hot Mix Asphalt, was transported.  
10  
11 The route of exposure for occupational exposures to the chemicals listed herein, by the  
12 affected persons has been from Asphalt, including Hot Mix Asphalt, Asphalt smoke,  
13 diesel smoke, and associated fumes that have been breathed in via the ambient air by the  
14 exposed persons (and was a direct result of helping apply Asphalt to surfaces, or being  
15 near where hot Asphalt was mixed, heated, or transported) causing inhalation contact  
16 with their mouths, throats, esophagi, and lungs. Employees also sustained a route of  
17 exposure of dermal contact by touching Asphalt with their bare skin while mixing,  
18 heating, transporting, and applying the Asphalt, including hot Asphalt, to surfaces at  
19 work locations, as well as employees touching the Asphalt by inadvertently allowing  
20 their work gloves, which had touched the Asphalt, to touch their bare skin. Employees  
21 also sustained dermal contact when moving the Asphalt, including hot Asphalt, in and out  
22 of the storage facilities and garage areas where the Asphalt has been stored at  
23 Defendants' places of business. Exposures occurred in the counties whose district  
24 attorneys received copies of the operative notices.  
25  
26  
27  
28

1 38. For each such type and means of exposure, the violators have exposed and are continuing  
2 to expose the above referenced persons to:

3 **CARCINOGENS:** Benz[a]anthracene; Chrysene; Toluene; diisocyanate;  
4 Formaldehyde (gas); 5-Methylchrysene; Nickel and Certain Nickel Compounds;  
5 Dichloromethane (Methylene Chloride); Benzene; Lead and Lead Compounds;  
6 Benzo[b]flouranthene; Benzo[k]flouranthene; Benzo[a]pyreneIndeno[1,2,3-cd]; pyrene;  
7 Acetaldehyde; Beryllium and Beryllium compounds; Arsenic (inorganic arsenic  
8 compounds); Cadmium and Cadmium compounds; Chromium (hexavalent compounds);  
9 Tetrachloroethylene (Perchloroethylene); Trichloroethylene; ChryseneDibenz[a,h];  
10 anthracene; Carbazole; Dibenzo[a,i]pyrene; Dibenzo[a,e]pyrene; Dibenz[a,j]acridine;  
11 Dibenzo[a,h]pyrene; Dibenzo[a,l]pyrene; Acetaldehyde; Benz[a]anthracene; 1,3  
12 Butadiene; Diesel Engine Exhaust; Silica, crystalline (airborne particles of respirable  
13 size)

14 **REPRODUCTIVE TOXINS:** Toluene; Carbon Disulfide; Benzene; Lead; Mercury and  
15 Mercury compounds; Arsenic (inorganic oxides); Cadmium; Methyl Chloride

16  
17  
18  
19 39. Each Proposition 65-Listed Chemical listed above first appeared on the Governor's  
20 Proposition 65 list more than twenty months before Plaintiff sent a Proposition 65 60-  
21 Day Notice of intent to sue to each respective named defendant. Therefore, each  
22 Proposition 65-Listed Chemical was subject fully to Proposition 65 warning requirements  
23 at the times of the exposures alleged herein.  
24

25  
26 40. For the past several years, both the Attorney General as well as Plaintiff have  
27 investigated and prosecuted Asphalt Paving entities as an industry for alleged violations  
28 of Proposition 65. Plaintiff and its counsel poured and continue to pour significant

1 resources, including time, money, and energy, in trying to bring all members of the  
2 Asphalt Paving Industry in compliance with Proposition 65. The Attorney General and  
3 Plaintiff co-litigated a previous action that resulted in a universal settlement reached with  
4 over 100 Asphalt Paving entities. That settlement had an extensive opt-in period that  
5 allowed all Paving entities, including these defendants, to join the settlement and end not  
6 only their continual violations of Proposition 65, but also their potential liabilities for  
7 alleged violations of the statute. Accordingly, these defendants have had plenty of time  
8 and opportunities to end their violations of Proposition 65 and come into compliance with  
9 the law.  
10

11  
12 41. Instead, these defendants flouted the various opportunities they had to comply with  
13 Proposition 65, and chose instead not to participate in a win-win settlement agreement  
14 offered by both the Attorney General and CAG. The settlement these defendants chose  
15 not to participate in would have benefited all parties involved, in that it would have  
16 required defendants to significantly reduce both their employees' as well as the public's  
17 exposures to deadly chemicals, and would have obligated these defendants to post the  
18 required warnings. By choosing to continue their violations, these defendants have  
19 significantly enlarged their potential liabilities for violating Proposition 65.  
20  
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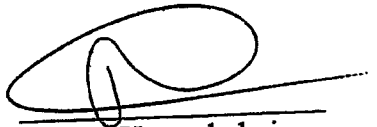
22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff in the FIRST CAUSE OF ACTION demands against each defendant as  
24 follows:  
25

- 26 1. A permanent injunction pursuant to Health and Safety Code section 25249.7, subdivision (a),  
27 and the equitable powers of the court;  
28

- 1 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b) in the amount
- 2 of \$2,500 per day per violation;
- 3 3. Order to disgorge or pay restitution in an amount sufficient to restore to any person in interest
- 4 any money or property that Defendants may have acquired by means of violations set forth
- 5 herein and to prevent defendants' future use of such violations, pursuant to the equitable
- 6 powers of the court;
- 7
- 8 4. Costs of suit;
- 9
- 10 5. Reasonable attorney fees and costs; and
- 11 6. Any further relief that the court may deem just and equitable.
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13 Dated: March 18, 2008

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